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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 496

AMALGAMATED TRANSIT UNION, AFL–CIO, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

No. 497

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND LOCAL UNION 549, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

282-914—66

STATEMENT

These cases are direct appeals from a judgment of a three-judge district court (IBT J.S. 39)[1] dismissing separate suits brought to set aside two orders of the Interstate Commerce Commission (ATU J.S. App. B, 8a–32a; IBT J.S. App. C, 41–58). Both appeals raise the same question: whether the Commission is required as a matter of law to include in any order approving a motor-carrier unification the same protective conditions for the motor carriers' employees as are required for railroad employees by Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. 5(2)(f).

No. 496. The Commission granted permission to Midwest Buslines, Inc., and Continental Tennessee Lines, Inc., to purchase two of American Buslines' routes (ATU J.S. 9a). Twenty-two of the forty American drivers on those routes remained in the employ of American, and it is on their behalf that petitioner Transit Union asserts that the protective conditions imposed by the Commission are inadequate (ATU J.S. 18a).[2] The Commission found that none of the American drivers had suffered a loss of wages as a result of the unification (ATU J.S. 27a). Each

[1] "IBT J.S." refers to the jurisdictional statement filed by the International Brotherhood of Teamsters, *et al.*, in No. 497. "ATU J.S." refers to the jurisdictional statement filed by the Amalgamated Transit Union in No. 496.

[2] The challenged conditions were imposed in proceedings on remand from an earlier decision by the district court setting aside an order in which the Commission had declined to establish any protective conditions. *Amalgamated Ass'n of Street, Elec. Ry.* v. *United States*, 221 F. Supp. 958 (D.C.D.C.).

had sufficient seniority to obtain higher-paying jobs on other routes with American (ATU J.S. 18a), albeit a change of residence was required (ATU J.S. 18a, 27a). In these circumstances, the Commission declined to provide protection against loss of wages (ATU J.S. 27a). The Commission did, however, provide for lump-sum payments to the drivers approximately equal to costs incurred in moving households, loss of pay while moving, temporary maintenance of two households, and increased rents and utility costs for a period of one year from the date of their re-assignment (ATU J.S. 31a).

The Commission noted that although Section 5(2)(f) requires mandatory financial protection of railroad workers for a minimum of four years, no such formula of protection has been prescribed by Congress or applied by the Commission in the case of motor-carrier employees (ATU J.S. 23a–28a). The Commission held, therefore, that it was not required to grant equally extensive protective conditions to motor-carrier employees unless in a particular case there were compelling reasons for imposition of such conditions and that none was shown here (ATU J.S. 28a).

No. 497. The Commission granted the application of the Overnite Transportation Company to purchase all of the operating rights and properties of Rutherford Freight Lines, Inc., on the condition that any employee separated from his employment with either carrier as a result of the transaction be given up to three months' severance pay (IBT J.S. 57–58). The Commission determined that such payments would be

sufficient to tide over separated employees until they gained new employment (IBT J.S. 56) and would not imperil the financial ability of Overnite to purchase the financially stricken Rutherford company (IBT J.S. 56). The Commission contrasted the employment opportunities available to the displaced motor-carrier employee with the plight of the similarly situated railroad employee. It noted that motor-carrier employees possess more flexible skills than most railroad employees, which allows them more readily to be absorbed in other industries, and that the employment opportunities of motor-carrier employees are also superior in that the truck, bus and auto industries, unlike the railroad industry, are expanding (IBT J.S. 55).

On appeal, the cases were consolidated.[3] The district court found that the protective conditions provided by the Commission were fair and equitable to both the employees and the motor carriers involved (ATU J.S. 5a–7a). It also sustained the Commission's policy of protecting motor carrier employees, as a class, differently from rail employees (ATU J.S. 5a–6a). The court found this policy to have a rational basis and held that the statutory protections for railroad employees contained in Section 5(2)(f) do not govern motor-carrier consolidations (ATU J.S. 6a).

ARGUMENT

These appeals do not warrant plenary consideration. The judgment below is correct and should be affirmed.

[3] A third suit was brought by American Buslines, Inc., to contest the Commission's order in No. 496 and was consolidated with the other two below. No appeal has been taken by American Buslines, however.

1. Congress has not required the Commission to grant motor-carrier employees the same protection as railroad employees. Section 5(2)(f), which sets forth certain mandatory provisions, is by its terms applicable only to railroad employees. The relevant legislative history (H. Rep. No. 2832, 76th Cong., 3d Sess.; 86 Cong. Rec. 5869–5871, 5878, 5879–5881, 5883–5884, 11537, 11545) shows the same limited concern. We alluded (Statement, *supra,* p. 4) to the policy considerations which support different legislative treatment of the two classes of employees. We note also that when Section 5(2)(f) was added to the Act in 1940, the great majority of the nation's railroads and railroad labor organizations had recently entered into an industry-wide bargaining agreement (the Washington Agreement of 1936, see IBT J.S. 15) establishing a norm for protective conditions in railroad consolidations and thus a basis for detailed legislative treatment. No such norm has ever been established for the motor-carrier industry.[4]

2. Section 5(2)(c) of the Interstate Commerce Act, 49 U.S.C. 5(2)(c), which provides that in passing upon any proposed unification—motor or rail—the Commission shall give weight to the "interest of the carrier employees affected," does not automatically extend the requirements of Section 5(2)(f) to motor-

[4] *United States* v. *Lowden*, 308 U.S. 225, 234, which held prior to the enactment of Section 5(2)(f) that the Commission had properly imposed protective conditions in a railroad consolidation substantially similar to those approved in the Washington Agreement, thus lends no support to appellants' position.

carrier employees. It simply requires that in both rail and motor unifications the Commission take into account the impact on the employees involved. Unlike Section 5(2)(f), which lays down specific conditions for railroad employees, Section 5(2)(c) is general in terms. The amount and kind of protection to be accorded motor-carrier employees under Section 5(2)(c) consequently depends on how the interests of those employees are affected by particular unifications. *Short Line, Inc.—Purchase—New England Transp. Co.*, 75 M.C.C. 33, 37; *Baggett Transp. Co.—Purchase—Hunt, Freight Lines, Inc.*, 75 M.C.C. 147, 152, appeal dismissed *sub nom. Baggett Transportation Company* v. *United States*, 206 F. Supp. 835, 841 (N.D. Ala.).

Determination of what is fair and equitable is a matter for the expert administrative discretion of the Commission. Appellants have made no showing that the employee protective conditions imposed for their benefit were not adequate to compensate them for the economic disadvantages that may reasonably be anticipated to result from approved transactions. Nor have they shown that the circumstances are such as to compel the imposition of the identical protective conditions required to be granted railroad employees. Cf. *Day* v. *United States*, 246 F. Supp. 689 (S.D. Cal.), affirmed *per curiam*, 384 U.S. 267; *Brotherhood of Locomotive Engineers* v. *United States*, 217 F. Supp. 98, 103–104 (N.D. Ohio).

3. The distinction drawn by Congress and the Commission between the two classes of employees is not an unconstitutional discrimination, for the classification is clearly reasonable. See *United States* v. *Petrillo,* 332 U.S. 1, 8–9; *Currin* v. *Wallace,* 306 U.S. 1, 13–14; *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 584–585. Congress has singled out railroad employees for unique treatment in many areas, including collective bargaining and grievances,[5] retirement benefits,[6] and unemployment compensation.[7] Moreover, as the Commission noted the employment situations in the rail and motor-carrier industry are entirely different (Statement, *supra,* p. 4). Displaced rail employees face an industry in which employment is shrinking while the displaced motor-carrier employee is readily absorbed into expanding industries (IBT J.S. 55).[8] These factors demonstrate that uniform treatment of rail and motor-carrier employees is not required by the Constitution.

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[5] Railway Labor Act, 44 Stat. 577, 45 U.S.C. 151 *et seq.*

[6] Railroad Retirement Act of 1937, 50 Stat. 307, 45 U.S.C. 228a *et seq.*

[7] Railroad Unemployment Insurance Act, 52 Stat. 1094, 45 U.S.C. 351 *et seq.*

[8] Statistics reflecting employment trends reveal that total rail employment has declined 50 percent since 1950, while at the same time total motor freight transportation and storage employment has increased by nearly 55 percent. Interstate Commerce Commission, *79th Annual Report,* 1965, p. 146.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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